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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-504

THOMAS JAMES SLONE, Sr.,
Petitioner,

vs.

THE SUPREME COURT OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

Petitioner, Thomas James Slone, Sr., prays that a writ of certiorari issue to review the judgment in case 72-461 of the Supreme Court of Ohio entered June 29, 1972.

OPINION BELOW

The entry of The Supreme Court of Ohio is appended hereto and labeled Appendix A. However, in contravention of § 2 (C) of Article IV of the Constitution of the State of Ohio, neither the opinion nor the reasons therefor have been reported.

JURISDICTION

Although not expressly identified as a judgment, judgment-in-fact by the Supreme Court of Ohio was rendered and entered on June 29, 1972.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3) and in accordance with 28 U.S.C. § 2101 (c).

QUESTIONS PRESENTED

1. Does the portion of Rule 1 of the Supreme Court Rules for the Government of the Bar of Ohio which requires each applicant for admission to the Bar of Ohio to have, in addition to a degree from an accredited law school, a bachelor's degree *based wholly on courses and credits outside of law school* violate the due process clause of the fourteenth amendment by failing to have a rational connection with each individual applicant's fitness or capacity to practice law?

2. Where the Ohio rule requiring a bachelor's degree for admission to the bar examination is automatically satisfied by *all* who receive a bachelor's degree prior to admission to law school, but a person receiving a bachelor's degree subsequent to his law degree must have (a) made a record of academic achievement "satisfactory to the court" and (b) may be permitted to take the bar examination only "at the court's discretion", does the application of a different standard merely because of the order of receipt of degrees violate the equal protection clause of the fourteenth amendment to the Constitution?

3. Does the rejection *without notice or hearing,* even though a hearing was requested, of applications for admission to the bar examination and for registration as a candidate for the admission to practice law violate the fourteenth amendment guarantee of procedural due process?

3A. As a subsidiary question to 3 above: May the Supreme Court of Ohio, consistent with procedural due

process of law, deny an applicant for admission to the bar examination a hearing and therefore deny the applicant an opportunity to present evidence to the court that the applicant has substantially complied with the court's bachelor's degree requirement by having the full equivalent of a bachelor's degree?

4. Is a bar admission rule which states that persons earning a bachelor's degree subsequent to a law degree may, *subject to* the court's discretion, be permitted to apply for admission to the practice of law only if the applicant's academic achievement is found to be "satisfactory to the court" unconstitutionally vague for failure to define the intended standard with adequate certainty?

5. Is a person's constitutional right to procedural due process of law as guaranteed by the fourteenth amendment violated by the Supreme Court of Ohio reserving, in secrecy, the reasons for its decision in a case through failure to publicly report the decision and the reasons therefor in view of the fact that Article IV § 2 (C) of the Constitution of the State of Ohio expressly requires reporting decisions in *all* cases before the court together *with the reasons therefor?*

6. In a civil lawsuit of original jurisdiction in the Supreme Court of Ohio, does entry of judgment against the plaintiff and for the defendant before expiration of the time allotted in the Ohio Rules of Civil Procedure for the defendant to file an answer, and indeed without the defendant ever having filed an answer or a motion, violate the fourteenth amendment constitutional guarantee of procedural due process of law?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

A. U.S. Constitution, Amendment XIV, § 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Ohio Constitution

1. Article IV, § 5 (B)

The Supreme Court shall . . . make rules governing the admission to the practice of law and discipline of persons so admitted.

2. Article IV, § 2 (B) (1)

The Supreme Court shall have original jurisdiction in the following: . . . (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

3. Article IV, § 2 (C)

The decisions in *all** cases in the Supreme Court shall be reported, together with the reasons therefor.

C. Rules of Practice of the Supreme Court of Ohio

1. Rule VIII, ORIGINAL ACTIONS.

a. Section 1. An original action, other than habeas corpus, shall be instituted by the filing of a complaint, together with seventeen copies thereof, and of a praecipe directing the Clerk of the Supreme Court to issue service of summons, and such action *shall** proceed as any civil action under the Ohio Rules of Civil Procedure.

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* Emphasis supplied.

D. The Supreme Court Rules for the Government of the Bar of Ohio

1. Rule I. Admission to the Practice of Law.*

a. Section 1. General Requirement.

Except as provided in Section 8 of this rule, to be admitted to the practice of law in Ohio, a person must . . . (c) have earned, prior to admission to law school, a bachelor's degree earned in a college or university approved by one of the following accrediting associations: Middle States Association of Colleges and Secondary Schools, New England Association of Colleges and Secondary Schools, North Central Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Southern Association of Colleges and Secondary Schools, and the Western College Association: provided, however, that where a person has earned, subsequent to graduation from law school, such a bachelor's degree through completion of courses and credits other than those received in law school, and has made a record of academic achievement which is satisfactory to the Court, such a person may, in the Court's discretion, be permitted to apply for admission to the practice of law in Ohio.

* Rule 1 is fully set forth in Appendix B.

STATEMENT OF THE CASE

Petitioner is 42 years of age, has graduated (No. 16 of 60 graduates) and received a juris doctor degree from a fully accredited law college, is a professional engineer in both Ohio and Maryland, a registered U.S. patent agent, and an inventor of patented inventions. Petitioner has continuously worked in the field of Patent Law since January 3, 1970 under the exclusive supervision of members of the Ohio Bar. Although petitioner has earned one-hundred eighty-seven (187) undergraduate quarter credits from accredited colleges, petitioner does not have a bachelor's degree because of technical requirements with respect to residency requirements and academic areas of concentration.

Respondent regulates admissions to the practice of law in Ohio under § 5 (B) of Article IV of the Constitution of the State of Ohio. Respondent has promulgated Rules for the Government of the Bar of Ohio to effect regulation of admissions to the practice of law in Ohio. Also under the authority of § 5 (B) of Article IV, respondent promulgates Rules of Practice of The Supreme Court of Ohio, and the Ohio Rules of Civil Procedure.

Petitioner obtained his legal education and a juris doctor degree from the Salmon P. Chase College of Law. This law college was and is fully accredited.

Although Chase had an undergraduate degree prerequisite for admission, petitioner was admitted in 1968 without such a degree. The dean, after reviewing petitioner's prior academic record, work history, references, and record of community service, and after personally interviewing petitioner and his wife, believed that petitioner substantially met the entrance requirement, that petitioner could successfully do the work at Chase, and that respondent herein would grant an exception to the bachelor's degree requirement of Rule 1. The fact that petitioner ranked sixteenth

in his graduating class of sixty, although he was the only one of the sixty who did not have a bachelor's degree, acquits the dean's judgment.

Section 1 (C) of respondent's Rule 1 of the Supreme Court Rules for the Government of the Bar of Ohio, hereinafter Rule 1, provides that a person who has graduated, as petitioner has, from law school without having previously earned a bachelor's degree may be permitted to apply for admission to the practice of law in Ohio only if the person subsequently earns a bachelor's degree through completion of courses and credits other than those received in law school.

On March 20, 1972, petitioner concurrently filed with respondent an application for admission to the bar examination and an application for registration as a candidate for admission to the practice of law. These applications (hereinafter the applications), fully complied with Rule 1 except for satisfying the bachelor's degree requirement. Petitioner herein concurrently petitioned respondent to approve the applications.

In conjunction with the applications, the dean of petitioner's law college certified to respondent that petitioner ". . . is a person of good moral character who has sufficient knowledge and *ability** to discharge the duties of an attorney at law". Further, five character reference questionnaires, *all completed by members of the Ohio Bar*, were forwarded to respondent with the applications.

Respondent rejected the applications without hearing or notice, stating, in a letter dated May 1, 1972, ". . . the requirement of having earned a bachelor's degree prior to entering law school will not be waived."

Before petitioner submitted the applications, petitioner had tried diligently to persuade respondent to grant an ex-

* Emphasis supplied.

ception[1] to the bachelor's degree requirement or to modify[2] it to embrace equivalents, or to agree[3] that "or equivalent" had to be found to be implicitly in the rule for the requirement to be constitutional. Further, respondent had refused to supply history of the rule which had been requested[4] by petitioner, and respondent had refused to permit petitioner to present an oral petition[5] to delineate constitutional deficiencies of the requirement as practiced by respondent.

Following respondent's rejection of the applications for admission to the bar examination and for registration as a candidate for admission to the practice of law, on May 10, 1972 petitioner herein submitted yet another petition to respondent for reconsideration and a hearing with respect to the rejected applications. Respondent rejected the requested reconsideration and hearing, without notice or hearing, stating in a letter dated June 6, ". . . the decision is final and will not be reconsidered."

On June 19, 1972 petitioner filed a complaint invoking the original jurisdiction of the Supreme Court of Ohio under Article IV § 2 (B) (1) (g) of the Ohio Constitution. This complaint challenged respondent's rejection of petitioner's applications and repeated denials of requests for a hearing.

Substantial federal questions were raised in the complaint which is fully set forth in Appendix C. Specifically, respondent's rejections of the petitioner's applications with-

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[1] Petition of September 10, 1968; rejected September 23, 1968.

[2] Petition of October 10, 1968; rejected October 15, 1968.

[3] Petition of February 8, 1969; never answered.

[4] Letter request of September 29, 1968; answered in undated note received with rejection of October 15, 1968.

[5] Letter request of October 22, 1968; rejected November 4, 1968.

out notice or hearing were alleged, in paragraph 7, to violate ". . . the due process clause of the fourteenth amendment to the Constitution of the United States . . ." and ". . . invidiously discriminatory in violation of the equal protection clause of the fourteenth amendment to the Constitution of the United States . . .". Further violations of due process were alleged in paragraphs 8, 9, and 19 of the complaint. It was further alleged in paragraph 15 of the complaint that Rule 1, without standards, constituted an unconstitutional delegation of respondent's rule making authority to the enumerated accrediting associations and their member institutions.

Ignoring the Ohio Rules of Civil Procedure which it promulgated, and without notice or hearing, and without ever filing an answer or motion as provided by the rules, and without denying the allegations of the complaint, and without considering the determinative issue of petitioner's fitness or capacity to practice law, respondent unilaterally elected to treat the complaint as a mere request to amend or waive its bachelor's degree requirement. The Supreme Court of Ohio said:

> Treating the complaint filed heein [sic] as a request or petition to the Court to amend or waive its rule setting the standards for admission to the practice of law in Ohio, which is the fourth such request or petition filed by this plaintiff, the court finds that such request should be, and hereby is, denied.

This unprecedented, summary, unilateral action was yet another instance of respondent's repeated failure to give effect to the constitutional safeguard of due process. It precipitated the instant petition for a writ of certiorari.

REASONS FOR GRANTING THE WRIT

1. Ohio's Rule, which sets forth the most stringent educational requirements for admission to the bar of all of the States, tends to operate nationwide to invidiously exclude economically disadvantaged persons from the practice of law in Ohio and tends to create a privileged class of practitioners from the higher income strata for whom extra-legal, formal education in curriculums wholly outside of law school represents no hardship.

2. The requirement of Ohio's Rule 1 that every applicant for admission to the bar examination and the practice of law have an extra-legal bachelor's degree in unspecified curriculums should be declared unconstitutional because it does not have a rational connection with determining a person's fitness or capacity to practice law.

3. While broad qualification guidelines may legitimately be used by a State to regulate admissions to the bar, a State's exclusion of any person from the practice of law must, in order to satisfy the Due Process and Equal Protection clauses of the Fourteenth Amendment, be based on an objective determination that the individual applicant is presently unfit or lacks the capacity to practice law.

4. Because the extra-legal, post-legal, formal education requirements of Ohio's Rule 1 for admission to the bar examination and admission to the bar for persons not having a bachelor's degree prior to beginning the study of law is subject to after-the-fact determination of "satisfactory academic achievement" but fails to specify what is a satisfactory level of academic achievement, it is unconstitutionally vague since a person of ordinary intelligence would not know during the pursuit of such education that his level of academic achievement would retrospectively be found "satisfactory".

ARGUMENT

I. THE CONSTITUTIONAL FRAMEWORK OF THE USE AND LIMITATION OF BAR ADMISSION QUALIFICATIONS

The Court coalesced the Constitutional Framework of the Use and Limitations of Bar Admission Qualifications in *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 238-239 (1957).

> A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. [Citations] A State can require high standards of qualification, such as good moral character or proficiency in the law, before it admits an applicant to the bar, *but any qualification must have a rational connection with the applicant's fitness or capacity to practice law** [Citations] . . . Even in applying permissible standards, officers of the State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. [Citations]

Much progress has been made to give effect to the Due Process and Equal Protection Clauses of the Fourteenth Amendment with respect to individuals since the court permitted the word "person" to be construed to be confined to "males" so as to exclude "women". *Ex parte Lockwood*, 154 U.S. 116, 118 (1894).

The lack of a professional degree from an accredited institution to exclude a person from a licensed profession has been sanctioned by the court and is not challenged by

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* Emphasis supplied.

petitioner. *Graves* v. *Minnesota*, 272 U.S. 425 (1926), *Hackin* v. *Arizona*, 389 U.S. 143 (1967), *Dent* v. *State of West Virginia*, 129 U.S. 114 (1889). However, the mere lack of a non-professional undergraduate degree to augment a professional graduate degree from an accredited institution as the sole reason to exclude a person from a licensed profession without looking at any other signs of fitness or capacity has never been, and should not be sanctioned by the court.

Indeed, in an unanimous opinion of this court, Chief Justice Burger cogently declared the infirmity of mere degrees as *fixed* measures of capability. *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433 (1971):

> The facts of this case demonstrate the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as fixed measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress had mandated the common-sense proposition that they are not to become masters of reality.

Petitioner does not challenge respondent's authority to require an applicant to bear the burden of proof of fitness and capacity to practice law and to furnish enough evidence to make a prima facie case. *Konigsberg* v. *State Bar of California*, 366 U.S. 36, 40-41 (1961).

Petitioner submits that sufficient evidence of his fitness and capacity to practice law is in the record to make a prima facie case. But, even if the evidence were not sufficient to make a prima facie case, petitioner submits that respondent's repeated and continuing contravention of due process, to wit, summary proceedings without notice and

hearing, have thwarted petitioner's diligent effort to prove his present fitness and capacity to practice law.

Assuming arguendo that an undergraduate bachelor's degree might tend to prospectively evidence a person's ability to earn a graduate level juris doctor degree in law, such evidentiary value is moot with respect to petitioner who ranked sixteenth in his law school class of sixty and has had the juris doctor degree conferred on him. Petitioner submits that reasonable men would not disagree with the dean of petitioner's accredited law college who certified to respondent that petitioner ". . . has sufficient knowledge and ability to discharge the duties of an attorney at law."

Petitioner submits that for persons having a professional degree from an accredited college, *per se* extra-professional educational requirements are unconstitutional. Such requirements ignore the obvious fact that a graduate degree could not be earned if the person lacked the intellectual development that might be inferred from an undergraduate degree (otherwise the undergraduate-graduate dichotomy lacks substance).

II. AS APPLIED TO THE INSTANT CASE, RESPONDENT VIOLATED THE CONSTITUTIONAL FRAMEWORK FOR THE USE AND LIMITATIONS OF BAR ADMISSION QUALIFICATIONS AS DEFINED IN SCHWARE v. BD. OF BAR EXAMINERS, 353 U.S. 232 (1957).

The manner of excluding petitioner from the bar examination and the practice of law in Ohio violated due process since the disposition of petitioner's applications and complaint was without notice or hearing.

The summary action on petitioner's complaint is not supportable in Ohio law. Such summary action emasculated petitioner's rights under the Ohio Constitution to bring an original action to adjudicate his bar admission question and to have the case and the reasons therefor reported for public scrutiny. Indeed, the Ohio Rules of Civil Procedure would now support a default judgment for petitioner herein. Petitioner herein has not made such a motion to respondent for a default judgment against respondent because it would be a vain act in view of respondent's demonstrated disdain for due process in this case.

Respondent erred in giving its bachelor's degree requirement the weight of a conclusive presumption.

There is no rational nixus between respondent's unspecific, *per se*, extra-law bachelor's degree requirement and petitioner's present fitness and capacity to practice law. Can it reasonably be argued that if he now completed a degree in home economics or basketweaving that such degree would make him more qualified to practice law than he presently is? Respondent's exclusion of petitioner is mired in the quicksand of this unreasonable contention!

The literal application of respondent's bachelor's degree requirement invidiously discriminates against disadvantaged individual persons and erects an exclusionary protective fence around a favored class of individuals without regard to each person's individual fitness or capacity to practice law. It is significant that the constitutional policy as stated in the *Schware* case uses the definite article "the" and the singular possessive "applicant's" to bridge "rational connection" with "fitness or capacity to practice law". Thus, the policy clearly requires that each exclusion from the practice of law be based on a finding that *the individual* is unfit or lacks the capacity to practice law,

rather than the use of an artificial class categorization to be blindly followed without reason or individual application.

Respondent's bachelor's degree requirement further violates substantive due process because it is so indefinite that reasonable men can only speculate about its meaning. With respect to persons who satisfy the requirement subsequent to graduation from law school, respondent's reservation of *discretion* to permit persons to apply for admission to the practice of law in Ohio providing they have made records of academic achievement which are *satisfactory* to respondent is too unspecific and too vague to satisfy substantive due process. The vice of unconstitutional vagueness is aggravated where, as here, the rule in question operates to inhibit the exercise of freedoms affirmatively guaranteed by the Federal Constitution, to wit: the freedom to pursue any lawful occupation which one has the fitness and capacity to pursue. *Cramp* v. *Board of Public Instruction*, 368 U.S. 278 (1961).

III. THE DELEGATION OF GOVERNMENTAL RULE MAKING POWER TO PRIVATE PARTIES IS UNLAWFUL. CARTER v. CARTER COAL CO., 298 U.S. 238 (1936).

Respondent's bachelor's degree requirement of Rule 1 still further contravenes substantive due process because it delegates, without standards, respondent's authority to make rules governing the admission to the practice of law to the enumerated accrediting associations and their member institutions. Such associations and institutions have the freedom to change the requirements needed to earn a bachlor's degree without respondent's concurrence. Rule 1 prospectively sanctions *every* such change.

IV. THE RIGHT TO NOTICE AND HEARING IN LICENSING CONTROVERSIES IS FUNDAMENTAL IN THE UNITED STATES.

This right is too fundamental to require a citation of authority. Even respondent itself has very recently reaffirmed this right in Ohio. *State, ex rel. Great Lakes College* v. *State Medical Board,* 29 Ohio St. 2d 198, 280 N.E. 2d 900 (1972):

> [Syllabus] 1. Where the State Medical Board seeks to withdraw the standing accorded a school giving instruction in limited branches of medicine or surgery pursuant to R.C. 4731.19, *procedural due process requires notice and an opportunity* for the school *to be heard.*•

In the well reasoned majority opinion Justice Corrigan observed:

> When the State Medical Board took *ex parte action* by withdrawing 'approval' of The Great Lakes College, Inc., we feel that the State Medical Board *exceeded* its *authority, acted arbitrarily and in violation of the constitutional rights of due process which must be afforded* the relator, namely, *notice and an opportunity to be heard.*• 29 Ohio St. 2d 198, 200, 280 N.E. 2d 900, 901 (1972).

CONCLUSION

In *per se* extra-professional degrees and other such formal educational requirements to qualify for admission to the licensed professions are not declared unconstitutional, the rule of *Griggs* (401 U.S. 424, 1971) that mere degrees cannot be fixed measures of capability will narrowly stand

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• Emphasis supplied.

for the proposition that the Willie Griggses and the Abe Lincolns of the United States will be assured equal opportunity only when seeking to become technicians; not when seeking to evidence their fitness and capacity to be admitted to the professions! In States such as Ohio where the bars are controlled by the States' highest courts, such courts must be denied the use of blank checkbooks to effect control. As this court has often repeated, there must be a rational connection between fitness and capacity to practice a profession and the application to every applicant of rules governing admissions to the professions.

Respectfully submitted,

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APPENDIX A

THE STATE OF OHIO,)
)
City of Columbus)

1972 TERM

To wit: June 29, 1972

THOMAS JAMES SLONE, SR.,
Plaintiff,

vs.

SUPREME COURT OF OHIO,
Defendant.

No. 72-461

COMPLAINT FOR ADMISSION TO BAR

This is an original action filed in this court wherein the plaintiff urges that his application for registration as a law student and his application to take the July, 1972, Ohio Bar Examination be approved.

Treating the complaint filed heein (sic) as a request or petition to the Court to amend or waive its rule setting the standards for admission to the practice of law in Ohio, which is the fourth such request or petition filed by this plaintiff, the court finds that such request should be, and hereby is, denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. ——— Page ———.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 29th day of June, 1972.

/s/ THOMAS L. STARTZMAN, Clerk.
By /s/ SAM F. ADKINS, Deputy.

APPENDIX B

Rule I of The Supreme Court Rules For The Government Of The Bar of Ohio.

ADMISSION TO THE PRACTICE OF LAW.

Section 1. General Requirement.

Except as provided in Section 8 of this rule, to be admitted to the practice of law in Ohio, a person must

(A) be a citizen of the United States;

(B) be 21 years of age;

(C) have earned, prior to admission to law school, a bachelor's degree earned in a college or university approved by one of the following accrediting associations: Middle States Association of Colleges and Secondary Schools, New England Association of Colleges and Secondary Schools, North Central Association of Colleges and Secondary Schools, Northwest Association of Secondary and Higher Schools, Southern Association of Colleges and Secondary Schools, and the Western College Association; provided, however, that where a person has earned, subsequent to graduation from law school, such a bachelor's degree through completion of courses and credits other than those received in law school, and has made a record of academic achievement which is sat-

isfactory to the Court, such a person may, in the Court's discretion, be permitted to apply for admission to the practice of law in Ohio;

(D) have a degree from a law school which is approved by the American Bar Association and if located in Ohio, is also a member of the League of Ohio Law Schools;

(E) be approved as to character under procedures provided in this rule;

(F) have passed an examination conducted by the Ohio Board of Bar Examiners; and

(G) have taken the oath of office.

Section 2. Preliminary Registration Requirements.

(A) Every person who intends to take the Ohio bar examination shall file with the Clerk of this Court, within 120 days after entering law school, an application for registration as a candidate for admission to the practice of law on a form prescribed and furnished by the Court. The application shall be accompanied by

(a) a certificate of the dean of the law school showing that the applicant has begun the study of law;

(b) a properly authenticated transcript of college credits showing that prior to admission to law school the applicant has earned a bachelor's degree;

(c) a character questionnaire in duplicate prescribed and furnished by the Court;

(d) a fingerprint identification on the form used by the Federal Bureau of Investigation; and

(e) a registration fee of twenty dollars.

Section 3. Character Investigation.

(A) The president of each local bar association shall appoint a Committee on Applicants for Admission to the

Practice of Law consisting of three or more members each of whom shall serve without compensation for a term of three years. One-third of the committee members' terms shall expire each year. These committees shall be responsible for investigating the character, reputation and moral qualifications of applicants and shall report their findings and recommendations to the Clerk of this Court.

(B) If the applicant is a resident of Ohio, one copy of the questionnaire required by Section 2 shall be forwarded by the Clerk to the Committee on Applicants for Admission to the Practice of Law in the county where the applicant claims permanent residence.

(C) In conducting the investigation, the local committee shall utilize the applicant's character questionnaire and shall also obtain answers to questionnaires from three citizens in the county, none of whom is related to the appellant. Two members of the committee shall personally interview the applicant and record the results on a form prescribed by the Court.

(D) This Court shall determine from the report of the local bar association committee and, in those instances where it is submitted, the report and recommendation of the Board of Commissioners on Character and Fitness, whether the applicant shall be accepted for registration and to take the bar examination. The Clerk shall notify each applicant concerning the acceptance or rejection of the application.

(E) If the applicant is a nonresident, the Clerk shall take such steps as are feasible to provide for character investigations as nearly as possible in conformity to the above procedures.

Section 4. Application for Examination.

(A) Applications to take the examination shall be filed

with the Clerk of this Court at least 90 days before the time fixed for the examination. Each application shall be accompanied by

(a) the appellant's affidavit that he has read and studied the Code of Professional Responsibility adopted by this Court;

(b) an affidavit that the applicant has not engaged in the unauthorized practice of law in this state;

(c) a certificate from the law school that the applicant has or will have received a law degree, is a person of good moral character, has sufficient knowledge and ability to discharge the duties of an attorney at law and has received instruction in legal ethics;

(d) a questionnaire in duplicate furnished by the Court updating the information on character and moral fitness furnished at the time of registration; and

(e) a fee of forty dollars refundable only in the event of disapproval.

(B) This Court shall pass on the application and the Clerk shall notify the applicant of the Court's approval or disapproval. The Court may, upon its own motion, refer the application to the local bar association admissions committee for further investigation.

Section 5. Bar Examination.

(A) The bar examination shall be prepared and conducted under the direction of the Board of Bar Examiners appointed by the Court and consisting of twelve members of the bar of Ohio. The members of the board shall serve terms of five years.

(B) Two examinations shall be held each year in Columbus. One shall begin on the first Tuesday in March and the other on the last Tuesday in July. Each examination shall continue for three days and shall be divided into

six half-day sessions. Each examiner shall prepare and submit four questions, of which the applicants shall answer three. The subject matter of the questions shall not be designated or labeled.

(C) The examination shall consist of the following:

Subjects	Number of Questions
Business Associations (including Agency, Partnership and Corporations)	7
Constitutional Law	5
Contracts	5
Criminal Law	2
Equity, Trusts and Wills	8
Evidence	5
Negotiable Instruments	2
Property (Real and Personal)	5
Pleading and Practice	4
Torts	5

Effective July 1, 1972, Section 5 (C) is amended to read as follows:

Subjects	Number of Questions
Business Associations (including Agency, Partnership and Corporations)	7
Constitutional Law	5
Contracts	5
Criminal Law	2
Trusts and Wills	5
Evidence	5
Negotiable Instruments	2
Property (Real and Personal)	5
Pleading and Practice	4
Torts	5
Federal Taxation	3

(D) No applicant shall be admitted to the practice of law unless a grade of 75 percent is received on the examination. The grades as determined by the Board of Bar Examiners shall be final.

(E) The Board of Bar Examiners may, subject to the approval of the Court, promulgate additional rules to aid in the conduct of the examinations.

Section 6. Re-Examination.

(A) Applicants for re-examination may apply for admission to the March examination only. No applicant will be admitted to more than three examinations.

(B) Applications must be filed with the Clerk of this Court at least 90 days before the time fixed for examination.

(C) Before being admitted to the examination, the applicant must again be approved by the local Committee on Admissions to the Practice of Law.

(D) Each application for re-examination, submitted on a form prescribed by the Court, must be accompanied by a fee of sixty dollars refundable only in the event the application is disapproved. The fee for a second re-examination is seventy dollars.

Section 7. Induction to the Bar.

(A) Each successful applicant and each person admitted under Section 8 must have his name entered on a roll designating his residence and take the following oath of office.

I Do Solemnly Swear:

I will support the Constitution of the United States and the Constitution of the State of Ohio;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice, *So Help Me God.*

(Clerk's note: This form of oath was adopted January 25, 1910. It is the form recommended by the American Bar Association.)

(B) A charge of one dollar shall be made for a duplicate certificate of admission.

Section 8. Admission Without Examination.

(A) An applicant for admission to the practice of law in Ohio without examination must file the following with the Clerk of this Court:

(a) an affidavit that the applicant has not engaged in the unauthorized practice of law in this state;

(b) a certificate of admission as an attorney at law in the highest court of another state or in the District of Columbia;

(c) a certificate, signed by a judge of a court of record of the state from which he seeks admission, indicating that the applicant is of good moral character and is in good standing in the bar of that state;

(d) certificates evidencing education equal to the requirements prescribed by this Court for admission to the practice of law in effect at the time the applicant was admitted in such other state.

(e) evidence showing that applicant has, while a non-domicillary of Ohio and for at least five years, engaged in legal work outside Ohio of such character and description as shall satisfy this court that the applicant possesses the legal skills deemed adequate for admission to the practice of law in Ohio without examination.

(f) evidence showing that applicant has, for at least five years, engaged in the full time teaching of law at a law school referred to in Section 1 (D) of this rule;

(g) a certificate by an attorney at law of this state that the applicant is of good moral character and recommending him for admission to the practice of law in Ohio;

(h) applicant's affidavit that he is a citizen of the United States and that he is a resident of this state or intends to come into the state for the purpose of making it his permanent residence (if the applicant is not a resident of Ohio, his certificate shall not be issued until he has established residence in this state);

(i) an application and questionnaire, in duplicate, for use by the National Conference of Bar Examiners in making a character investigation;

(j) a fingerprint identification card on the form used by the Federal Bureau of Investigation;

(k) a nonrefundable fee of two hundred dollars.

(B) This Court shall pass on the application, and the Clerk shall notify the applicant of the Court's approval or disapproval.

(C) An applicant under this section shall not engage in the practice of law in this state prior to the filing of his application. To do so constitutes the unauthorized practice of law and will result in a denial of the application. This paragraph (C) does not apply to participation by a nonresident of Ohio in a cause being litigated in this state when such participation is with leave of the judge hearing such cause. (Effective September 1, 1971.)

(D) An applicant who has taken and failed to pass an Ohio bar examination may not be admitted to the practice of law under this rule. (Effective April 5, 1971.)

Section 9. Board of Commissioners on Character and Fitness.

(A) There is hereby created as Commissioners of this Court a Board of Commissioners on Character and Fitness which shall consist of one member of the Bar of this Court, appointed by this Court from each appellate district. The term of office of each member of said Board of Commissioners shall be three (3) years, beginning January 1 next following his appointment. Provided, however, that for the first term, three members shall be appointed for one year, four members for two years and four members for three years. Provided, however, that any member of the Board whose term has expired and who shall have an uncompleted assignment as a member of a panel shall con-

tinue to serve for the purpose of such assignment until it shall have been concluded before the Board of Commissioners, and further provided that his successor commissioner shall take no part in the proceedings of the Board concerning such assignment. Appointments to terms commencing January 1 of any year shall be made prior to December 1 of the preceding year. Vacancies for any cause shall be forthwith filled by appointment by this Court for the unexpired term. The Court shall each year designate one member as Chairman of said Board of Commissioners. The Administrative Director, the Assistant Administrative Director or the Clerk of the Court may act as the Secretary of the Commission. The Chairman and the Secretary shall have authority to execute administrative documents on behalf of the Board of Commissioners and of the panels thereof.

(B) The Board of Commissioners is empowered and charged to:

1. Supervise and direct the local bar association admissions committees in the investigation of the character and fitness of applicants for admission to the Ohio Bar. In furtherance thereof they may establish rules of procedure and forms to be used and may initiate investigations sua sponte at any time.

2. Promulgate, subject to the approval of the Court, standards of conduct for applicants for admission to the bar.

3. Hear all appeals from recommendations of local bar admission committees by applicants for admission to the bar.

4. Submit recommendations to this Court, as to the approval or disapproval of applications for registration or applications for examination.

(C) If the local bar association admissions committee recommends that an application be disapproved or rejected, the committee shall so notify the applicant by forwarding to him by registered or certified mail a copy of such recommendation. The committee shall also file a copy of such recommendation with the Secretary of the Board of Commissioners.

(D) The applicant may, within ten (10) days after receipt of the copy of the recommendation of the local bar association committee, file a request in writing with the Secretary of the Board of Commissioners that a hearing be conducted by the Board.

(E) Thereafter and upon reasonable notice to the applicant and the Chairman of the local bar association admissions committee, the Board or a panel thereof, shall conduct a hearing at a place designated by the Board and otherwise inquire into the character, fitness and general qualifications of the applicant. At such hearing and inquiry the local bar association admissions committee and the applicant may obtain and offer such information as bears upon the character, fitness and general qualifications of the applicant. The Board may taken (sic) and hear testimony in person or by deposition, administer oaths and compel by subpoena the attendance of witnesses and the production of books, papers and documents. The hearing provided for herein may be held by a panel selected by the Chairman of the Board and consisting of not less than three members of the Board of whom one shall be designated Chairman. The panel shall report its findings together with a stenographic record of the proceedings to the Board of Commissioners for its consideration and determination. The Chairman of the Board, the Chairman of the panel and the Secretary shall have power to issue subpoenas which shall be issued in the name and under the

seal of this Court and signed by said Chairman or the Secretary.

(F) The refusal or neglect of the person subpoenaed as a witness to obey a subpoena, to attend, to be sworn or to affirm, or to answer and proper question shall be deemed to be contempt of this Court and shall be punished accordingly.

(G) The rules of evidence as far as reasonably applicable shall be observed in the conduct of all hearings, and the applicant shall be entitled to be represented by counsel of his own choice, at his own expense.

(H) The burden of proof in such hearings shall be on the applicant to establish his good moral character, fitness and general qualifications to practice law in Ohio.

(I) If the Board of Commissioners determines that the application in question should be approved, it shall so notify the applicant and the Chairman of the local bar association admissions committtee.

(J) If the Board of Commissioners determines that the application should be disapproved, it shall make a final report of the proceedings, including its findings of fact and recommendation and shall file the same, together with the transcript taken, in the office of the Clerk of this Court, and shall forthwith notify the applicant, the Chairman of the local bar association admissions committee, and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendation.

(K) On the filing of such report of the Board of Commissioners, this Court shall issue to the applicant an order to show cause why the report should not be confirmed. All proceedings thereafter shall be as provided in Sec-

tions 17 and 18 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

(L) After hearing on objections, or, if objections are not filed within the prescribed time, this Court shall enter such order as it may find proper.

APPENDIX C

IN THE SUPREME COURT OF OHIO

Number 72-461

THOMAS JAMES SLONE, SR.,
Plaintiff,

vs.

THE SUPREME COURT OF OHIO,
Defendant.

COMPLAINT
(Filed June 19, 1972)

This is an original action concerning admission to the practice of law.

COUNSEL

Plaintiff, pro se
Thomas James Slone, Sr.
11518 Imhoff Ct.
Cincinnati, Ohio 45240

Defendant
Not designated

IN THE SUPREME COURT OF OHIO

No. 72-461

THOMAS JAMES SLONE, SR
11518 Imhoff Ct.
Cincinnati, Ohio

Plaintiff

vs.

THE SUPREME COURT OF OHIO

Defendant

COMPLAINT

1. The original jurisdiction of defendant is invoked to determine an issue of admission to the practice of law under § 2 (B) (1) (g) Article IV of the Constitution of The State of Ohio.

2. Plaintiff has applied to defendant for Admission to the Bar Examination to qualify for admission to The Bar of Ohio pursuant to Gov. R. 1§§1, 4 and, to the best of his knowledge and belief, has complied fully therewith except plaintiff does not have a bachelor's degree.

3. Plaintiff has applied to defendant for Registration as a Candidate for Admission to the Practice of Law pursuant to Gov. R. 1§2 and, to the best of his knowledge and belief, has complied fully therewith as said rule is practiced by defendant except plaintiff does not have a bachelor's degree.

4. Defendant has rejected plaintiff's applications (hereinafter designated said applications) delineated in paragraphs 2 and 3 for the sole reason that plaintiff does not

have a bachelor's degree from an approved undergraduate college or university.

5. Defendant has an affirmative duty to approve said applications unless defendant determines that plaintiff is presently unfit or lacks the capacity to practice law. See *Schware* v. *Board of Bar Examiners* 353 US 232, 1 L ed 2d 796, 77 S.Ct. 752.

6. Defendant's rejection delineated in paragraph 4 hereof is based on giving the bachelor's degree requirement of Gov. R. 1 the weight of a conclusive presumption.

7. With respect to plaintiff, the defendant's conclusive presumption in paragraph 6 hereof violates the due process clause of the Fourteenth Amendment to The Constitution of the United States and is invidiously discriminatory in violation of the equal protection clause of the Fourteenth Amendment to The Constitution of the United States in view of defendant's practice of liberally waiving full literal compliance with Gov. R. 1 for others.

8. Defendant is in violation of the due process clause of the Fourteenth Amendment of The Constitution of The United States as delineated in paragraph 7 hereof because the requirement of a bachelor's degree does not have a rational connection with plaintiff's present fitness or capacity to practice law in view of plaintiff having informed defendant that:

a. Plaintiff has a Juris Doctor degree from the Salmon P. Chase College of Law of Cincinnati, Ohio, said degree having been conferred June 2, 1972;

b. Plaintiff has a total of 187 quarter hours of undergraduate credits earned from The University of Cincinnati (115) and The Ohio State University (72) independently from and prior to beginning his JD degree program in 1968;

c. Plaintiff is a Professional Engineer in Ohio and has continuously held registration number 25612 in good standing since September 22, 1959, which date antedates defendant's bachelor's degree requirement;

d. Plaintiff is a Professional Engineer in the State of Maryland and has continuously held registration number 5295 in good standing since January 19, 1967;

e. Plaintiff is a Patent Agent registered with the United States Department of Commerce and has continuously held registration number 26337 in good standing since February 7, 1972;

f. Plaintiff presently works in the Patent Division of The Procter & Gamble Company, Cincinnati, Ohio under the direct supervision of members of The Ohio Bar and has done so since January 3, 1970;

g. Plaintiff was certified to defendant, pursuant to the application delineated in paragraph 2 hereof, by W. Jack Grosse, Esq., Dean of the Salmon P. Chase College of Law, to be ". . . a person of good moral character who has sufficient knowledge and ability to discharge the duties of an attorney at law.";

h. Plaintiff has objectively demonstrated intellectual capacity, skill, and creativity as witnessed by plaintiff being the sole inventor with respect to U.S. patents 3,295,720 and 3,481,709, and one of the two co-inventors with respect to U.S. patents 3,371,519 and 3,371,520; and,

i. Plaintiff's work experience includes being a project engineer, managing engineering projects and drafting and prosecuting patent applications as a patent agent.

See *Schware* v. *Board of Bar Examiners* 353 US 232, 1 L. ed 2d 796, 77 S Ct 752.

9. Defendant's rejection delineated in paragraph 4 hereof is a further violation of the due process clause of the Fourteenth Amendment to The Constitution of The United States because the bachelor's degree requirement does not have a rational connection with plaintiff's present fitness or capacity to practice law in view of the express language of Gov. R. 1§1 (c) which specifies that a bachelor's degree earned subsequent to graduation from law school be based on courses and credits other than received in law school. The absence of such a rational connection is apparent because no amount of courses or credits in law school (neither Juris Doctor nor Doctor of Laws related) will satisfy the rule whereas only courses and credits earned outside of law school are deemed sufficient to satisfy the rule.

10. The absence of a rational connection between defendant's bachelor's degree requirement and plaintiff's present fitness or capacity to practice law is further apparent from the fact that the term "bachelor's degree" as used in Gov. R. 1 is not limited to any specific academic field. There is a patent absence of a rational connection between plaintiff's fitness or capacity to practice law and degrees sanctioned by defendant in such fields unrelated to the practice of law as home economics, archeology, music, etc.

11. Plaintiff is presently fit and has the capacity to practice law in Ohio notwithstanding the fact he does not have a bachelor's degree.

12. Plaintiff's present fitness and capacity to practice law can be determined by defendant notwithstanding the fact plaintiff has not been granted a bachelor's degree.

13. Defendant's extra law school educational require-

ment as set forth in Gov. R. 1 for admission to the practice of law is phrased in the most stringent express language and, as applied by the defendant, is the strictest requirement of its kind in The United States or its territories by virtue of defendant not accepting or being disposed to accept the equivalence of a bachelor's degree in lieu of a bachelors degree per se.

14. Where a state seeks to impose a new, higher standard than all of its sister states and the other territories of The United States under its police power with respect to matters of health, safety, or welfare, the state must show a compelling need for the standard and a substantial relationship between the standard and the purpose sought to be effected thereby. Defendant has failed to show such a compelling need and substantial relationship. See for instance, *Bibb* v. *Navajo Freight Lines, Inc.* 359 US 520, 3 L. Ed. 2d 1003, 79 S.Ct. 962.

15. The bachelor's degree requirement of Gov. R. 1 is an unconstitutional delegation of defendant's authority to enact rules governing admissions to the practice of law because it prospectively sanctions, without standards, and gives the force of law to institutional rules, regulations and curriculum promulgated by non-judicial, non-governmental administrations of the members of the non-governmental accrediting associations enumerated in said rule.

16. Plaintiff petitioned defendant on or about May 10, 1972 for a hearing in the matter of said applications.

17. Defendant denied plaintiff's request for a hearing June 6, 1972, as set forth in paragraph 16 hereof.

18. "Procedural due process in connection with the denial of a license to practice law or medicine requires that the applicant be given notice and an opportunity to be

heard by the body which rules on his application." Annotation: "Denial of medical or legal professional license as violating due process – federal cases", 6 L ed 2d 1328, 1332.

19. Defendant's denial of a hearing as set forth in paragraph 17 is a violation of the due process clause of the Fourteenth Amendment of The Constitution of The United States.

20. Plaintiff tenders herewith two certified checks in the sums of Twenty Dollars and Forty Dollars as required by Gov. R. 1 for processing said applications.

21. Plaintiff will be irrepairably damaged if defendant does not permit plaintiff to take the Bar Examination of July 25-27, 1972 with his peers who also graduated from law school in June 1972 while the study of law is fresh in plaintiff's mind.

22. Defendant cannot be damaged by permitting plaintiff to take the Bar Examination of July 25-27, 1972 if defendant reserves the right to withhold plaintiff's admission to the practice of law in Ohio until the constitutional questions raised in this complaint are fully adjudicated.

WHEREFORE, plaintiff prays that defendant: amend Gov. R. 1 to delete therefrom the *per se* bachelor's degree requirement; conduct a hearing to determine plaintiff's present fitness and capacity to practice law in Ohio in the event a positive determination of fitness and capacity is not otherwise determined; approve plaintiff's said applications; in any event, grant plaintiff admission to take the Bar Examination to be conducted July 25-27, 1972; upon passing said examination to admit plaintiff to the practice of

law in Ohio; and, for such other and further, legal and equitable relief as this court deems appropriate.

/s/ THOMAS JAMES SLONE, SR.
Plaintiff, pro se
11518 Imhoff Ct.
Cincinnati, Ohio 45240
Phone No. 513-851-4549

PRAECIPE

To The Clerk of
The Supreme Court of Ohio

Please issue a summons for service having a copy of this complaint attached thereto upon

WILLIAM J. BROWN
Attorney General of
The State of Ohio
State House Annex
Columbus, Ohio 43215

/s/ THOMAS JAMES SLONE, SR.
Plaintiff, Pro se